IN THE

Supreme Court of the United States

No. 72-782

GATEWAY COAL COMPANY,
Petitioner,

v.

UNITED MINE WORKERS OF AMERICA, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Respondent, Local Union 6330, United Mine Workers of America, opposes the petition for writ of certiorari for the reasons presented herein.

STATEMENT OF ISSUE PRESENTED FOR REVIEW

Was the Court of Appeals correct in deciding, as a matter of contract interpretation, that the collective bargaining agreement in the present case does not contain any obligation on the part of employees to submit safety disputes to compulsory arbitration?

STATEMENT OF THE CASE

Respondent Local Union 6330 relies on the statement of facts contained in Judge Hastie's opinion for the Court of Appeals. Pet. App. C. That statement

makes clear what the petitioner's bland account does not: that the work stoppage in the present case arose because of the gravest sort of dereliction of duty by supervisory personnel at the Gateway Mine; that the dereliction involved willful, indeed criminal, failure to carry out mine safety procedures required by law; that as a result, the lives of coal miners working underground at Gateway were put in jeopardy; that the walkout was undertaken as a specific protest against unsafe working conditions which were left uncorrected by petitioner and were honestly and reasonably regarded as intolerable by the men whose lives were at stake.

REASONS FOR DENYING THE WRIT

This Court's decision in *Boys Markets, Inc.* v. *Retail Clerks*, 398 U.S. 235 (1970), holds that when a work stoppage violates the employees' contractual duty to arbitrate—but not otherwise—an injunction may issue restraining the walkout. In each case in which an employer invokes *Boys Markets* and prays for issuance of a labor injunction, the court must decide in the first instance whether the particular walkout does in fact amount to a violation of the labor agreement in question. More specifically, it must decide whether the stoppage concerns an underlying dispute or grievance that the bargaining parties have obligated themselves to settle, not by self-help, but by compulsory arbitration. In the present case this threshhold issue was decided adversely to petitioner. The decision below involves the application of well-established principles to particular facts, and gives rise to no important question of federal law appropriate for resolution by this Court.

1. This case turns on a narrow question of contract interpretation: whether the 1968 Bituminous Coal Wage Agreement requires safety disputes to be submitted to compulsory arbitration. The text and background of that particular private agreement determine the issue, and thus the practical significance of the decision below at most extends to the parties to the bargaining contract in question. Moreover, the relevant contractual provisions have since been changed —the 1971 agreement by specific terms makes safety issues subject to arbitration. See Pet. at p. 17, n. 6. It follows that the ruling below no longer controls even the relations of the bargaining parties herein. The case, in short, by no stretch presents "an important question of federal law" calling for review by this Court. Sup. Ct. Rule 19(b).

All that is needed to decide the case is the ruling below that the 1968 agreement cannot be read to require arbitration of safety disputes. It follows that a safety walkout cannot be enjoined, for absent a contractual duty to arbitrate, employee self-help in a safety dispute is entirely permissible and, as the court held, "[t]here was no wrong to enjoin." Pet. App. C, at p. 18a. The 1968 agreement contained (1) a broad and vaguely worded arbitration clause, with no mention of specific types of disputes; and (2) a specific provision pertaining directly to the unique problem of safety disputes, which by express terms gives a local union the right to stop work in protest against unsafe conditions that have gone uncorrected by mine management. The court quite sensibly decided that the specific self-help provision must be read to govern the general arbitration provision. In this way the contract as a whole is read harmoniously,

Mastro Plastics Corp. v. *NLRB*, 350 U.S. 270 (1956), and the quite evident intent of the bargaining parties—to provide a self-help exception in disputes involving mine safety, the matter of greatest concern to every coal miner—is honored. This interpretation is buttressed by the undisputed finding that no safety dispute at the Gateway mine had ever before been submitted to compulsory arbitration.

In resolving the narrow and dispositive question of contract interpretation, the court below touched upon broader themes concerning federal statutory policy in the areas of labor arbitration, labor injunctions, and protection of safety walkouts. As is indicated *infra*, the Court of Appeals' discussion under these headings in no way clashes with decisions and declarations of this Court. But it remains that all that is necessary to the decision below is a purposive construction of various relevant provisions of the 1968 agreement. In particular, the court below expressly reserved judgment on the question whether any provision of federal law amounts to an independent, noncontractual basis for shielding safety walkouts from injunctions. See Pet. App. C, at p. 18a, n. 1. That question need not arise in a case where the bargaining agreement would not itself support injunctive intervention. Indeed, that question may come to be litigated now that the provisions of the 1968 agreement concerning safety disputes have been rewritten and superceded by the 1971 agreement, which for the first time includes a provision for arbitration of safety disputes. But it would be most inappropriate to use the present case as a vehicle for addressing any of the broader questions that come to mind, since the court below had no occasion to do so, much less to consider the terms of the 1971 agreement and their impact on the situation at hand.

2. Petitioner protests that the lower court's contractual interpretation is out of joint with this Court's pronouncements in the Steelworkers Trilogy [1] concerning the proper role of the federal courts in the area of labor arbitration. The exact argument is hard to divine since the Trilogy itself underscores the undoubted principle that "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *United Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582 (1960). The Court of Appeals, quite in keeping with that principle, studied the bargaining contract at issue here and concluded that the agreement did not contain a duty of compulsory arbitration as to safety disputes.

Much more to the point, what the lower court did was simply to carry out this Court's specific and emphatic command:

> "When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, *the District Court may issue no injunctive order unless it first holds that the contract does have that effect. . . .*"

Boys Markets, supra, 398 U.S. at 254 (emphasis added). Careful inspection of the bargaining agreement, to see whether a particular dispute is in fact required to be settled by arbitration, is particularly important in the *Boys Markets* setting. For what is at stake in that situation is the employees' right to stop work free

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[1] *United Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *United Steelworkers* v. *Enterprise Wheel & Car. Corp.*, 363 U.S. 593 (1960).

of injunctive interference by the federal courts, a right protected by the anti-injunction provisions of the Norris-LaGuardia Act. 29 U.S.C. §§ 101, *et seq.* To be sure, that federal statutory right is not absolute, and *Boys Markets* teaches that it must yield in a proper case to the countervailing federal policy of protecting those private agreements that do call for peaceable resolution of disputes through the arbitral process. The obvious point is that a labor injunction cannot issue absent a sufficient contractual predicate, for otherwise the sacrifice of Norris-LaGuardia rights is without justification and would run counter to this Court's admonition in *Boys Markets:*

> "Our holding in the present case is a narrow one. We do not undermine the vitality of the Norris-LaGuardia Act."

398 U.S. at 253.

Petitioner and *amici* herein argue in effect that judicial caution must be thrown to the winds whenever an employer prays for a labor injunction, cites *Boys Markets,* and suggests any barely tenable theory why the dispute in question might fall within a contractual duty to arbitrate. Anything less, apparently, is thought to violate the "presumption of arbitrability" set up by the Steelworkers Trilogy. It is worth remembering that the relief sought in the Trilogy was specific performance of the parties' duty to arbitrate, *not* an injunction against concerted employee activity protected by Norris-LaGuardia. In the latter situation, which is the situation in *Boys Markets* and in the case at hand, some greater measure of judicial caution would seem appropriate, since it is "the task

of the courts to accommodate" the special policy of the Act. *Id.* at 251. But in any event, before a court interferes coercively on the theory that a contractual duty to arbitrate has been breached, it must first assess the bargaining contract and exercise an independent judgment on the question whether such a contractual duty in fact exists. Petitioner's approach would transform the federal judiciary into an injunction-granting machine, an unseemly role at the best of times and one that would subvert the cautious and sensitive accommodation of conflicting federal policies struck by *Boys Markets.*

It is particularly instructive in this regard that petitioner is unable to show that the decision below conflicts with that of any other federal court.[2] Proper administration of *Boys Markets* requires that a contractual predicate for injunctive interference be made out in each case, and the decision below is in line with the normal practice of every reviewing court.

3. Petitioner contends that the decision below involves an authoritative interpretation of section 502 of the Labor-Management Relations Act, 29 U.S.C. § 143, when in fact this case turns on the interpretation of specific provisions of a private labor contract, now superceded.

It is true that section 502 provides helpful guidance in deciding whether disputed contractual language

[2] Petitioner asserts that *Hanna Mining Co.* v. *United Steelworkers*, 464 F.2d 565 (C.A. 8, 1972), conflicts "in principle" with the decision of the court below. The *Hanna* court, however, specifically considered the Third Circuit's ruling herein and concluded that "[t]he instant case is clearly distinguishable." *Id.* at 567-568, n. 2.

makes safety walkouts permissible or not. That provision of the Taft-Hartley Act states:

> "... nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this act."

Section 502 expresses overriding congressional policy and qualifies section 301 of the same Act, 29 U.S.C. § 185, which for the first time made labor agreements enforceable in the federal courts.[3] Thus, whenever a walkout falls within the specific protection of section 502, an employer cannot procure a labor injunction even though (a) the agreement contains an express no-strike obligation and (b) the underlying dispute is subject to compulsory arbitration. See, e.g., *Philadelphia Marine Trade Assn.* v. *NLRB*, 330 F.2d 492 (C.A. 3, 1964), *cert. denied*, 379 U.S. 833 and 841; *NLRB* v. *Knight Morley Corp.*, 251 F.2d 753 (C.A. 6, 1957), *cert. denied*, 357 U.S. 927 (1958). But the court below had no occasion to decide whether section 502 had independent application to the facts herein, since it held that there was no contractual duty to arbitrate in the first place, and the question whether such a duty would nonetheless be excused by section 502 did not arise.

In short, in this case section 502 serves the quite limited function of aiding the court in interpreting disputed contractual language. Naturally contracts should be construed in line with public policy when that is reasonable. Here, the construction that makes

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[3] Petitioner of course brought this suit under section 301.

most sense from the neutral perspective of contract law principles also comports with the congressional policy expressed in section 502. Petitioner's contentions to the contrary notwithstanding, it is hard to believe that the policies of section 502 should be ignored in such circumstances.

There may well be unresolved questions concerning the independent scope of section 502 that in time should command this Court's attention. Petitioner seems to be concerned in particular that the purely "subjective" whim of employees may come to be honored as a matter of section 502 law. The danger appears remote in the extreme, but in any event the dread day is in no way advanced by the decision below. First—and to repeat—the privilege accorded safety walkouts by the lower court is a contractual privilege, not one founded on federal statutory law. The scope of the privilege is a matter for collective bargaining. Second, this is not a case in which the "subjective" caprice of employees was held to govern. The record contains a multitude of "objective" facts which gave rise to the miners' intense, honest. reasonable, good faith fear for their own safety and to their willingness to forfeit their pay rather than submit to working conditions they rightly regarded as intolerable.[4] Finally, this aspect of the case is not an appropriate object of this Court's reviewing powers, turning as it does on the sifting and weighing of highly particular factual elements.

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[4] Among the "objective" facts emphasized by the court below are the foremen's failure to carry out safety procedures; their criminal prosecution for falsification of safety records, and their *nolo* pleas; prior complaints about their unsafe practices; the emergency condition that resulted from their willful misconduct in the present case; and Gateway's failure to take corrective action.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

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